

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR.
COUNTY, et al.,

Plaintiffs,

vs.

SCOTT TURNER in his official capacity
as Secretary of the U.S. Department of
Housing and Urban Development, et al.,

Defendants.

No. 2:25-cv-00814-BJR

ORDER GRANTING PLAINTIFFS'
THIRD MOTION FOR
PRELIMINARY INJUNCTION

[PROPOSED]

This matter came before the Court on Plaintiffs' Third Motion for Preliminary Injunction (the "Motion"). Having considered the briefs and declarations submitted in support of and in opposition to the Motion and the other pleadings and papers filed in this action, the Court makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A. The HUD Grant Conditions

1. The "HUD Plaintiffs"¹ have received, currently receive, or are otherwise eligible

¹ The "HUD Plaintiffs" are Martin Luther King, Jr. County ("King County"), Pierce County, Snohomish County, City and County of San Francisco ("San Francisco"), County of Santa Clara ("Santa Clara"), City of Boston ("Boston"), City of Bend ("Bend"), City of Columbus ("Columbus"), City of New York ("NYC"), City of Cambridge ("Cambridge"), City of Chicago ("Chicago"), City of Culver City ("Culver City"), King County Regional Homelessness Authority ("KCRHA"), City of Minneapolis ("Minneapolis"), Metropolitan Government of Nashville & Davidson County ("Nashville"), City of Pasadena ("Pasadena"), Pima County, City

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1 to receive federal grants administered by Defendant U.S. Department of Housing and Urban
 2 Development (HUD), including but not limited to grants administered by HUD through its
 3 program offices. Collectively, HUD Plaintiffs rely on over \$2.5 billion in appropriated federal
 4 funds from HUD grant programs, which fund homelessness assistance, affordable housing,
 5 community development programs, and other services that benefit their communities.
 6

7 2. A number of HUD Plaintiffs rely on federal funding from the Continuum of Care
 8 (CoC) program established by Congress to provide critical services to individuals and families
 9 experiencing homelessness, including but not limited to rapid rehousing, permanent supportive
 10 housing, and other services. Of these, several Plaintiffs obtained relief from the challenged grant
 11 conditions as to the CoC program in this Court's order granting Plaintiffs' prior preliminary
 12 injunction (PI) motions (the "Initial CoC Plaintiffs"),² Dkt. # 169, while others are not covered by
 13 that order (the "New CoC Plaintiffs," and, together with the Initial CoC Plaintiffs, the "CoC
 14 Plaintiffs").³
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 16

17 of Pittsburgh ("Pittsburgh"), City of Portland ("Portland"), City of San José ("San José"), City of
 18 Santa Monica ("Santa Monica"), Santa Monica Housing Authority ("Santa Monica HA"), City of
 19 Tucson ("Tucson"), County of Alameda ("Alameda County"), City of Albuquerque
 20 ("Albuquerque"), Mayor and City Council of Baltimore ("Baltimore"), City of Bellevue
 21 ("Bellevue"), City of Bellingham ("Bellingham"), City of Bremerton ("Bremerton"), County of
 22 Dane ("Dane County"), City of Eugene ("Eugene"), County of Hennepin ("Hennepin County"),
 23 Kitsap County, City of Los Angeles ("Los Angeles"), City of Milwaukee ("Milwaukee"),
 24 Multnomah County, City of Oakland ("Oakland"), City of Petaluma ("Petaluma"), Ramsey
 County, City of Rochester ("Rochester"), County of San Mateo ("San Mateo County"), City of
 San Diego ("San Diego"), County of San Mateo ("San Mateo County"), City of Santa Rosa
 ("Santa Rosa"), County of Sonoma ("Sonoma County"), City of Watsonville ("Watsonville"),
 Culver City Housing Authority ("CCHA"), and Sonoma County Community Development
 Corporation ("SCCDC").

² The "Initial CoC Plaintiffs" are King County, Pierce County, Snohomish County, San
 Francisco, Santa Clara, Boston, NYC, Cambridge, KCRHA, Nashville, Pasadena, Pima County,
 San José, Santa Monica HA, and Tucson.

³ The "New CoC Plaintiffs" are Alameda County, Albuquerque, Baltimore, Columbus, Dane
 County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey
 County, San Mateo County, and Sonoma County.

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1 3. All HUD Plaintiffs also rely on a range of other competitive and formula grant
2 programs administered by HUD, including but not limited to the Community Development Block
3 Grant (CDBG) program, which provides flexible funding for development projects tailored to local
4 needs; the Emergency Solutions Grant (ESG) program, which funds emergency shelters and
5 homelessness services; the Home Investment Partnerships (HOME) program, which supports
6 development of affordable housing; and the Housing Opportunities for Persons with AIDS
7 (HOPWA) program, which funds housing for individuals with HIV/AIDS.
8

9 ***a.) The CoC Grant Conditions***

10 4. In July 2024, HUD posted a biennial Notice of Funding Opportunity (NOFO),
11 inviting applications from local coalitions, known as “Continuums,” for CoC funding. None of the
12 conditions challenged here were included in the NOFO. Rather, the NOFO specified that “HUD
13 is emphasizing system and program changes to address racial equity within CoCs and projects”
14 and instructed applicants that “[r]esponses to preventing and ending homelessness should address
15 racial inequities.” The NOFO further specified that each “CoC should address the needs of
16 LGBTQ+, transgender, gender non-conforming, and non-binary individuals and families in their
17 planning processes,” and “when considering which projects to select in their local competition to
18 be included in their application to HUD, CoCs should ensure that all projects provide privacy,
19 respect, safety, and access regardless of gender identity or sexual orientation.”
20

21 5. After reviewing applications, HUD conditionally awarded the New CoC Plaintiffs
22 and their Continuums nearly two hundred million dollars in CoC grants in Fiscal Year 2024. New
23 CoC Plaintiffs rely on CoC funding, which is typically awarded annually in relatively stable
24 amounts, to provide essential services to their most vulnerable residents, including but not limited
25 to rapid rehousing for those who become suddenly homeless, temporary and permanent supportive
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1 housing, rental assistance, mental health services, case management, and more.

2 6. HUD regulations permit HUD to require CoC recipients to comply with additional
3 “terms and conditions,” but such terms and conditions must be “establish[ed] by NOFA,” which
4 is a term interchangeable with NOFO.

5 7. Beginning in March 2025, HUD began presenting New CoC Plaintiffs with CoC
6 grant agreements (“CoC Agreements”) containing grant conditions (“CoC Grant Conditions”) that
7 were not included in the NOFO or authorized by any statute or regulation and that are identical to
8 the conditions this Court enjoined as to the Initial CoC Plaintiffs, specifically:
9

10 a. The CoC Agreements state that “[t]his Agreement, the Recipient’s use of funds
11 provided under this Agreement . . . , and the Recipient’s operation of projects
12 assisted with Grant Funds” are “governed by” not only certain specified
13 statutes, rules, and grant-related documents, but also by “all current Executive
14 Orders”

15 b. The CoC Agreements require the recipient to certify “it does not operate any
16 programs that violate any applicable Federal anti-discrimination laws,
17 including Title VI of the Civil Rights Act of 1964.” The CoC Agreements also
18 require the recipient to agree that “its compliance in all respects with all
19 applicable Federal anti-discrimination laws is material to the U.S.
20 Government’s payment decisions” for purposes of the False Claims Act (FCA),
21 31 U.S.C. §§ 3729 et seq. President Donald J. Trump, HUD, and other agencies
22 have confirmed their agenda is to prohibit policies or programs promoting
23 inclusion for people of all races, ethnicities, national origins, sexes, gender
24 identities, or sexual orientations through the guise of enforcing federal
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1 nondiscrimination law.

2 c. The CoC Agreements provide that “[n]o state or unit of general local
3 government that receives funding under this grant may use that funding in a
4 manner that by design or effect facilitates the subsidization or promotion of
5 illegal immigration or abets policies that seek to shield illegal aliens from
6 deportation.”

7
8 d. The CoC Agreements further require the recipient to comply with “applicable
9 requirements that HUD, the Attorney General, or the U.S. Center for
10 Immigration Services [sic] may establish from time to time to comply with
11 PRWORA, Executive Order 14218, other Executive Orders or immigration
12 laws.”

13
14 e. The CoC Agreements also provide:

15 Subject to the exceptions provided by PRWORA, the recipient must
16 use [the Systematic Alien Verification for Entitlements (SAVE)
17 system], or an equivalent verification system approved by the
18 Federal government, to prevent any Federal public benefit from
being provided to an ineligible alien who entered the United States
illegally or is otherwise unlawfully present in the United States.

19 f. The CoC Agreements require the recipient to agree it “shall not use grant funds
20 to promote ‘gender ideology,’ as defined in [Executive Order] 14168.”

21 g. The CoC Agreements prohibit the recipient from using grant funds “to fund or
22 promote elective abortions, as required by [Executive Order] 14182, Enforcing
23 the Hyde Amendment.”

24
25 8. The CoC Grant Conditions are in tension with, if not violative of, HUD’s own
26 regulations. For example, HUD regulations mandate “equal access” to CoC “programs, shelters,
27 other buildings and facilities, benefits, services, and accommodations . . . in accordance with [each]

1 individual's gender identity, and in a manner that affords equal access to the individual's family,"
2 including facilities with "shared sleeping quarters or shared bathing facilities." 24 C.F.R. §
3 5.106(b)–(c). HUD regulations also prohibit subjecting an individual "to intrusive questioning or"
4 asking individuals "to provide anatomical information or documentary, physical, or medical
5 evidence of the individual's gender identity." *Id.* § 5.106(b)(3). HUD's Secretary, Defendant Scott
6 Turner, has said HUD will no longer enforce these regulations, but they remaining in effect and
7 applicable to the CoC program.
8

9 9. On May 7, 2025, this Court entered a TRO enjoining Defendants HUD and Scott
10 Turner from, among other things, imposing or enforcing the CoC Grant Conditions, rescinding or
11 canceling the CoC Agreements or withholding funds based on such conditions, or requiring any
12 "certification" or representation related to the those conditions with respect to the original group
13 of CoC Plaintiffs.⁴ Dkt. ## 51, 52. On May 21, 2025, this Court extended the TRO for 14 days.
14 Dkt. # 73. On May 21, 2025, Plaintiffs filed their First Amended Complaint, naming additional
15 Plaintiffs affected by the CoC conditions. The Court entered a second TRO on May 23, 2025,
16 extending the relief granted in the first TRO to Plaintiffs Cambridge and Pasadena and their
17 Continuums as to the CoC Grant Conditions. Dkt. # 152.
18

19 10. On June 3, 2025, this Court entered a PI enjoining HUD and its officers and agents
20 from taking any of the actions barred by the earlier TROs or taking certain other actions
21 implementing the CoC conditions with respect to the Initial CoC Plaintiffs. Dkt. # 169.
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23 11. Plaintiffs filed their Second Amended Complaint on July 10, 2025, which, among
24 other things, added New CoC Plaintiffs. Plaintiffs then filed this Motion seeking, among other
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27 ⁴ Plaintiffs King County, Pierce County, Snohomish County, San Francisco, Santa Clara, Boston,
and NYC joined the First Motion for TRO as to the CoC Conditions. Dkt. # 5.

1 things, to extent the preliminary relief granted in the first PI Order as to the CoC Grant Conditions
2 to the New CoC Plaintiffs. The Initial CoC Plaintiffs and New CoC Plaintiffs assert the same
3 claims and allege materially similar harms with respect to the CoC Grant Conditions.

4 12. For similar reasons to those stated in the first PI order, the New CoC Plaintiffs face
5 immediate and irreparable harms during the pendency of this litigation absent a PI. The New HUD
6 Plaintiffs have an immediate need to receive CoC funds to sustain ongoing programs and services
7 and are faced with the choice of losing these funds or accepting conditions that are likely unlawful.
8 The HUD Plaintiffs have begun budgeting and planning for upcoming expenditures; households
9 reliant on private rentals are at risk of eviction if there is even a short-term interruption of rent
10 payments covered by CoC funds; and the interruption of funds could threaten the operation of
11 supportive housing. Ultimately, any delay or loss of funding would result in disruption of services
12 and cause irreparable damage to individuals' lives. For example:

- 13
14
15 a. The loss of CoC funding would likely lead to the eviction and homelessness of
16 hundreds of individuals living in permanent supportive housing or reenrolled in
17 rapid rehousing programs in Sonoma County while eliminating services that
18 allow them to live safely in the community.
- 19 b. Similarly, withholding CoC funds from Ramsey County would risk the loss of
20 access to housing and supportive services to individuals experiencing
21 homelessness, increasing their potential exposure to Minnesota's dangerously
22 cold winter weather.
- 23 c. Losing CoC funding would not only result in the loss of critical services for
24 Multnomah County's homeless residents, including mental health services, case
25 management, food, and child care services, it would also put at risk 100 full
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time positions at nonprofit services providers that are exclusively funded with CoC grants.

- d. Without CoC funds, Dane County has no source of funding to support 123 households enrolled in rental assistance programs. Without this assistance, these households would be unlikely to afford housing, leading to likely eviction and return to homelessness.

b.) The Non-CoC HUD Grant Conditions

13. Since the Court entered the PI order, it has become clear that HUD intends to impose conditions materially identical to the CoC Grant Conditions on all grant programs HUD administers, and at multiple stages of the grant-making process. HUD Plaintiffs rely on these grants to fund essential services, including homeless shelters, affordable housing, community development projects, and more.

14. In May 2025, HUD amended its Applicant and Recipient Assurances and Certifications (the “HUD Certifications”) to add a new certification that requires applicants to certify that they:

Will not use Federal funding to promote diversity, equity, and inclusion (DEI) mandates, policies, programs, or activities that violate any applicable Federal antidiscrimination laws.

(the “HUD DEI Certification”). Jurisdictions must submit the HUD Certifications to apply for HUD funding, including when they submit certain consolidated plans and/or action plans annually as a condition to receiving CDBG, ESG, HOME, and HOPWA formula funding.

15. On June 5, 2025, HUD announced additional conditions applicable to all formula grants administered by HUD’s Office of Community Planning and Development (CPD), including but not limited to the CDBG, ESG, HOME, and HOPWA programs. In particular, a letter by Claudette Fernandez, HUD’s General Deputy Assistant Secretary for CPD, lists the following

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1 conditions that will apply “[u]nder the FY 2025 grant agreement[s]” (collectively, and together
 2 with the HUD DEI Certification, the “Non-CoC HUD Grant Conditions”):

3 a. First, recipients must agree that they “shall not use grant funds to promote
 4 ‘gender ideology,’ as defined in Executive Order (E.O.) 14168, Defending
 5 Women from Gender Ideology Extremism and Restoring Biological Truth to
 6 the Federal Government” (the “CPD Gender Ideology Condition”).

7
 8 a. Second, each recipient must “agree[] that its compliance in all respects with all
 9 applicable Federal anti-discrimination laws is material to the U.S.
 10 Government’s payment decisions for purposes of [the FCA]” and “certif[y] that
 11 it does not operate any programs that violate any applicable Federal
 12 antidiscrimination laws, including Title VI of the Civil Rights Act of 1964”
 13 (together, the “CPD Discrimination Condition”). President Trump, HUD, and
 14 other agencies have confirmed their agenda is to prohibit policies or programs
 15 promoting inclusion for people of all races, ethnicities, national origins, sexes,
 16 gender identities, or sexual orientations through the guise of enforcing federal
 17 nondiscrimination law.

18
 19 a. Third, each recipient must agree that it “shall not use any grant funds to fund or
 20 promote elective abortions, as required by E.O. 14182, Enforcing the Hyde
 21 Amendment” (the “CPD Abortion Condition”).

22
 23 b. Fourth, recipients must agree that:

24 The Grantee must administer its grant in accordance with all
 25 applicable immigration restrictions and requirements, including the
 26 eligibility and verification requirements that apply under
 27 [PRWORA] and any applicable requirements that HUD, the
 Attorney General, or the U.S. Citizenship and Immigration Services
 may establish from time to time to comply with PRWORA,

Executive Order 14218, or other Executive Orders or immigration laws.

....

Unless excepted by PRWORA, the Grantee must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.

(together, the “CPD Verification Condition”).

c. Fifth, the recipient must agree that:

If applicable, no state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation.

(the “CPD Enforcement Condition”).

16. Further demonstrating the agency’s intent to apply the Non-CoC HUD Conditions to all HUD grant programs, in April 2025, HUD updated its General Administrative, National, and Departmental Policy Requirements and Terms for HUD’s Financial Assistance Programs (the “HUD Policy Terms”) to list President Trump’s executive orders among the “laws and policies that may apply” to HUD grants and to list requirements materially similar or identical to certain Non-CoC HUD Grant Conditions.

17. The Non-CoC HUD Grant Conditions are in tension with, if not violative of, congressional guidance and directives governing HUD grant programs. For instance, the HOME Investment Partnerships Act, Pub. L. No. 101-625, tit. II, 104 Stat. 4079, 4094, which established the HOME program requires participating jurisdictions “to establish and oversee a minority outreach program . . . to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women . . . in all contracts[] entered into by the

1 participating jurisdiction . . . to provide affordable housing authorized under this Act.” 42 U.S.C.
 2 § 12831(a). In addition, the Housing and Community Development Act of 1974, Pub. L. 93-383,
 3 88 Stat. 633, which established the CDBG program, requires the HUD Secretary to set aside some
 4 of the funds appropriated for the CDBG program for “special purpose grants,” which may include,
 5 among other things, grants to “historically Black colleges.” 42 U.S.C. § 5307(b)(2). Of the
 6 amounts set aside for special purpose grants, the Secretary “shall” make grants to institutions of
 7 higher education “for the purpose of providing assistance to economically disadvantaged and
 8 minority students who participate in community development work study programs and are
 9 enrolled in” qualifying degree programs. *Id.* § 5307(c). Finally, of the Cranston-Gonzalez National
 10 Affordable Housing Act, Pub. L. No. 101-625, 104 Stat. 4079, which established the HOME and
 11 HOPWA programs, indicates congressional intent to benefit historically disadvantaged groups,
 12 including the aim to “improve housing opportunities for . . . members of disadvantaged
 13 minorities.” 42 U.S.C. § 12702(3).

14
 15
 16 18. HUD Plaintiffs face immediate and irreparable harms from imposition of the Non-
 17 CoC HUD Grant Conditions during the pendency of this litigation absent a PI. Many HUD
 18 Plaintiffs face a deadline of Saturday, August 16, 2025, to submit consolidated and action plans to
 19 HUD, which would subject them to the Non-CoC HUD Grant Conditions, or else forfeit formula
 20 grant funding needed to support essential services. HUD Plaintiffs are already grappling with the
 21 uncertainty over federal funding by, for example, pausing affordable housing development and
 22 preservation. Loss of these funds would disrupt the lives of HUD Plaintiffs’ most vulnerable
 23 residents, likely leading to evictions and increased homelessness and further straining local
 24 resources. Even a temporary loss of funding would set back efforts to create and preserve
 25 affordable housing, ameliorate homelessness, and house low-income individuals living with
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1 HIV/AIDS. For example:

- 2 a. Loss of CDBG, HOME, and ESG funding would eliminate housing
3 opportunities for between 200 and 500 low income and homeless residents in
4 San Mateo County who rely on housing and shelter programs funding by these
5 grants.
6
- 7 b. Withholding HUD funding would place approximately 1,500 households in
8 Santa Monica that are currently housed through HOME and other HUD-funded
9 programs at immediate risk of homelessness.
- 10 c. Pierce County has had to pause a project to develop and preserve affordable
11 housing due to uncertainty over the Non-CoC HUD Grant Conditions.
- 12 d. Loss of funding would eliminate Bellingham's Home Rehabilitation Program,
13 which allows elderly and disabled residents the dignity of living safely in their
14 own homes, and would severely undermine the viability of Bellingham's food
15 bank, on which nearly 20% of the surrounding county's residents rely.
16

17 **B. The DOT Grant Conditions**

18 19. Many Plaintiffs rely, collectively, on billions of dollars in appropriated funds
19 through grant programs administered by the U.S. Department of Transportation (DOT) and its
20 operating administrations, which include but are not limited to the Federal Highway
21 Administration (FHWA), Federal Aviation Administration (FAA), Federal Railroad
22 Administration (FRA), and Federal Transit Administration (FTA) (collectively, the "DOT OAs,"
23 and together with Defendants DOT, Sean Duffy, Tariq Bokhari, Gloria M. Shepherd, Chris
24 Rocheleau, and Drew Feeley, the "DOT Defendants").
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20. The “Initial DOT Plaintiffs”⁵ obtained relief from the challenged grant conditions in this Court’s order granting Plaintiffs’ prior preliminary injunction (PI) motions, Dkt. # 169. Others joined this lawsuit subsequently and are not covered by that order (the “New DOT Plaintiffs,” and, together with the Initial DOT Plaintiffs, the “DOT Plaintiffs”).⁶

21. On April 24, 2025, DOT Secretary Sean Duffy issued a letter to “all recipients” of DOT grant funding announcing, among other things, a DOT “policy” to impose certain conditions on all DOT funding, including but not limited to grants administered by DOT and the DOT OAs. In particular, Secretary Duffy’s letter states that grant recipients’ “legal obligations require cooperation generally with Federal authorities in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.” It also states that DOT interprets federal anti-discrimination law to presumptively prohibit “any policy, program, or activity that is premised on a prohibited classification, including discriminatory policies or practices designed to achieve so-called ‘diversity, equity, and inclusion’ . . . goals.” Finally, the letter states that “DOT recipients are

⁵ The “Initial DOT Plaintiffs” are King County, Bend, Boston, Chicago, Columbus, Culver City, City of Denver (“Denver”), Intercity Transit, Minneapolis, Nashville, NYC, Pierce County, Pima County, Pittsburgh, Port of Seattle (“Seattle”), Portland, San Francisco, San José, Santa Clara, Santa Monica, Snohomish County, Sonoma County, Central Puget Sound Regional Transit Authority (“Sound Transit”), San Francisco County Transportation Authority (“SFCTA”), Treasure Island Mobility Management Agency (“TIMMA”), Tucson, and City of Wilsonville (“Wilsonville”).

⁶ The “New DOT Plaintiffs” are Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, City of Healdsburg (“Healdsburg”), Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, City of Pacifica (“Pacifica”), Pasadena, Petaluma, Puget Sound Regional Council (“PSRC”), Ramsey County, Rochester, City of Rohnert Park (“Rohnert Park”), San Diego, San Mateo County, Santa Rosa, Sonoma County Transportation Authority (“SCTA”), and Watsonville.

1 prohibited from engaging in discriminatory actions in their own policies, programs, and activities.”

2 22. Pursuant to the policy set forth in Secretary Duffy’s letter, the DOT Defendants
3 began attaching new conditions related to immigration enforcement, executive orders, and
4 diversity, equity, and inclusion (DEI) to DOT-funded grants.

5 23. For instance, several DOT Plaintiffs were previously awarded FTA funds pursuant
6 to programs codified in title 49, chapter 53 of the U.S. Code. These funds were awarded without
7 any of the conditions challenged here.

8 24. On April 25, 2025, FTA issued a revised Master Agreement, which applies to FTA
9 grants awarded to the DOT Plaintiffs. The new Master Agreement contains the following new
10 conditions (“FTA Grant Conditions”):
11

12 a. The FTA Master Agreement requires the recipient to “agree[] to comply with
13 all applicable federal requirements and follow applicable federal guidance.”
14 The Master Agreement defines “Federal Requirement” to include “[a]n
15 applicable federal law, regulation, or executive order.”
16

17 b. The FTA Master Agreement provides:

18 (1) Pursuant to section (3)(b)(iv)(A) [of Executive Order 14173],
19 the Recipient agrees that its compliance in all respects with all
20 applicable Federal antidiscrimination laws is material to the
21 government’s payment decisions for purposes of [the FCA].

22 (2) Pursuant to section (3)(b)(iv)(B) [of Executive Order 14173], by
23 entering into this Agreement, the Recipient certifies that it does
24 not operate any programs promoting [DEI] initiatives that
25 violate any applicable Federal anti-discrimination laws.

26 While FTA grants have long required compliance with nondiscrimination laws,
27 DOT has confirmed its intent to enforce a sweeping interpretation of these
conditions inconsistent with statutory text and current court interpretations of

the Federal antidiscrimination laws.

1 c. The FTA Master Agreement also provides:

2 The Recipient . . . will cooperate with Federal officials in the
3 enforcement of Federal law, including cooperating with and not
4 impeding U.S. Immigration and Customs Enforcement (ICE) and
5 other Federal offices and components of the Department of
6 Homeland Security in the enforcement of Federal immigration law.

7 25. This Court's May 7 TRO enjoined Defendants DOT, FTA, Sean Duffy, and
8 Mathew Welbes from, among other things, imposing or enforcing the FTA Grant Conditions,
9 rescinding or canceling FTA funds or withholding funds based on such conditions, or requiring
10 any "certification" or representation related to those conditions as to King County—the sole
11 Plaintiff to initially seek preliminary relief from the FTA Grant Conditions. This aspect of the TRO
12 served, in part, to prevent immediate and irreparable harms that King County faced from having
13 to choose between accepting likely unlawful conditions or losing hundreds of millions in FTA
14 funding.

15 26. Since then, DOT and the remaining DOT OAs began attaching substantially similar
16 conditions to numerous other DOT grants. These include, but are not limited to, programs
17 administered by FHWA, such as the Safe Streets and Roads for All (SS4A) program, the Federal
18 Highway-Aid Program, the Bridge Investment Program, the Culvert Aquatic Organism Passage
19 Program, and the Advanced Transportation Technology and Innovation (ATTAIN) program;
20 programs administered by FAA, such as the Airport Infrastructure Grants (AIG) program;
21 programs administered by FRA, such as the Railroad Crossing Elimination (RCE) Grant Program;
22 and programs administered directly by DOT, such as the Strengthening Mobility and
23 Revolutionizing Transportation (SMART) discretionary grant program. Moreover, Defendants
24 Duffy, DOT, and the DOT OAs have made clear that these conditions will now appear in all DOT
25 grants going forward.
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1 27. DOT and the remaining DOT OAs have provided grant agreements governing grant
2 programs that contain substantially the same three conditions as in the FTA Master Agreement
3 (collectively and together with the FTA Grant Conditions, the “DOT Grant Conditions”):

4 a. First, the DOT Defendants have imposed a discrimination condition (“DOT
5 Discrimination Condition”) that requires grant recipients, “[p]ursuant to
6 Section (3)(b)(iv), Executive Order 14173” to agree that “its compliance in all
7 respects with all applicable Federal antidiscrimination laws is material to the
8 government’s payment decisions for purposes of [the False Claims Act],” and
9 that “it does not operate any programs promoting [DEI] initiatives that violate
10 any applicable Federal anti-discrimination laws.”

11 b. Second, the DOT Defendants have imposed an immigration enforcement
12 condition (“DOT Immigration Enforcement Condition”) that requires recipients
13 to “cooperate with Federal officials in the enforcement of Federal law,
14 including cooperating with and not impeding U.S. Immigration and Customs
15 Enforcement (ICE) and other Federal offices and components of the
16 Department of Homeland Security in the enforcement of Federal immigration
17 law,” and a condition requiring recipients to “follow applicable federal laws
18 pertaining to Subchapter 12 and be subject to the penalties set forth in 8 U.S.C.
19 § 1324, Bringing in and harboring certain aliens, and 8 U.S.C. § 1327, Aiding
20 or assisting certain aliens to enter.” The Duffy Letter articulates DOT’s intent
21 to enforce an expansive and novel interpretation of these statutes, thereby
22 forcing local governments to participate in the Trump administration’s
23 aggressive immigration enforcement policies. It asserts that “[d]eclining to
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1 cooperate with the enforcement of Federal immigration law or otherwise taking
 2 action intended to shield illegal aliens from ICE detection contravenes Federal
 3 law and may give rise to civil and criminal liability” under “8 U.S.C. § 1324
 4 and 8 U.S.C. § 1373.”

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 6 c. Third, the DOT Defendants have imposed a condition (“DOT EO Condition”)
 7 that requires recipients to “comply with all applicable Federal laws, regulations,
 8 executive orders, policies, guidelines, and requirements as they relate to the
 9 application, acceptance, and use of Federal funds for this [grant]” and lists,
 10 among other things, Executive Orders 14168 (“Defending Women from Gender
 11 Ideology Extremism and Restoring Biological Truth to the Federal
 12 Government”) and 14173 (“Ending Illegal Discrimination and Restoring Merit-
 13 Based Opportunity”), as well as two criminal immigration statutes (8 U.S.C. §
 14 1324 and 8 U.S.C. § 1327) as “provisions” that are “applicable” to grant
 15 agreements.
 16

17 28. The DOT Grant Conditions are in tension with, if not violative of, congressional
 18 guidance and directives and HUD’s own regulations. They also contradict guidance contained in
 19 NOFOs issued by DOT announcing competitions for DOT funds.
 20

21 29. For instance, the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat.
 22 429, which established the Safe Streets and Roads for All (“SS4A”) grant program, requires the
 23 DOT Secretary, in awarding grants, to consider, among other things, the extent to which applicants
 24 and their proposed projects will ensure “equitable investment in the safety needs of underserved
 25 communities in preventing transportation-related fatalities and injuries.” Pub. L. 117-58,
 26 § 24112(c)(3), 135 Stat. 816.
 27

30. The DOT Discrimination Condition is in apparent tension with a statutorily required grant assurance sponsors must make to receive airport development grants from the FAA. In particular, sponsors must assure that they will take necessary action to ensure, to the maximum extent possible, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns owned and controlled by “a socially and economically disadvantaged individual” or other small business concerns in historically underutilized business zones. 49 U.S.C. § 47107(e)(1). “Socially and economically disadvantaged individual” is defined to include “Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities,” as well as women. *Id.* § 47113(a)(2); 15 U.S.C. § 637(d).

31. Many of the general terms and conditions adopted by DOT and its OAs, including but not limited to FTA, also require compliance with 2 C.F.R. § 200.321, which states, “[w]hen possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms” are, *inter alia*, “included on solicitation lists” and “solicited” when “deemed eligible.” In addition, 49 C.F.R. § 21.5, which prohibits discrimination, states, “[w]here prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity . . . the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.” 49 C.F.R. § 21.5(b)(7).

32. In February 2024, DOT posted a NOFO, updated in April 2024, announcing a competition for SS4A grant funding for Fiscal Year 2024 (the “FY 2024 SS4A NOFO”). The FY 2024 SS4A NOFO directed applicants to consider policy priorities in their applications, including

1 “Equity and Barriers to Opportunity” and “Climate Change and Environmental Justice.” The FY
2 2024 SS4A NOFO defined “equity,” which it strongly emphasized throughout, as “[t]he consistent
3 and systematic fair, just, and impartial treatment of all individuals, including individuals who
4 belong to underserved communities that have been denied such treatment, such as Black, Latino,
5 Indigenous and Native Americans, Asian Americans and Pacific Islanders, and other persons of
6 color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+)
7 persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely
8 affected by persistent poverty or inequality.”
9

10 33. This Court’s May 23 TRO enjoined DOT, the DOT OAs, and their officers and
11 agents from taking various actions to impose, enforce, or withhold DOT funds as to Plaintiffs
12 Columbus, Intercity Transit, King County, Minneapolis, NYC, Port of Seattle, and Tucson or their
13 subrecipients based on the DOT Grant Conditions or materially similar terms or conditions. The
14 May 23 TRO also ordered DOT and the DOT OAs to immediately treat any actions taken to
15 implement the DOT Grant Conditions against those Plaintiffs, including any delays or withholding
16 of funds based on the conditions, as void, and enjoined DOT and the DOT OAs from retroactively
17 applying the conditions to grant agreements during the effective period of the TRO.
18

19 34. This Court’s June 3, 2025 PI enjoined the DOT Defendants from taking any of the
20 actions enjoined in the TROs, as well as certain other actions to implement the DOT Grant
21 Conditions, with respect to the Initial DOT Defendants. However, the DOT Defendants have
22 continued to impose the DOT Grant Conditions on jurisdictions and local agencies that were not
23 subject to the PI order, including the New DOT Plaintiffs.
24

25 35. Plaintiffs Second Amended Complaint added the New DOT Plaintiffs to this
26 lawsuit. Plaintiffs then filed this Motion seeking, among other things, to extend the preliminary
27

1 relief granted in the first PI Order as to the DOT Grant Conditions to the New DOT Plaintiffs. The
2 Initial DOT Plaintiffs and New DOT Plaintiffs assert the same claims and allege materially similar
3 harms with respect to the DOT Grant Conditions.

4 36. For similar reasons to those stated in the first PI order, the New DOT Plaintiffs face
5 immediate and irreparable harms during the pendency of this litigation absent a preliminary
6 injunction. Any delay or loss of DOT funding would force the DOT Plaintiffs to substantially
7 curtail existing and planned transportation safety and other improvement operations, including but
8 not limited to enhancing pedestrian and cyclist safety, conducting airport renovations and bridge
9 improvements, and maintaining and replacing a range of transit vehicles. In some cases, the DOT
10 Plaintiffs need to draw down grant awards immediately or else divert resources from other projects
11 or services and face significant project delays. The loss of DOT funding would require the DOT
12 Plaintiffs to fundamentally rework their longstanding financial plans and procedures, capital
13 project delivery processes, and service delivery models in ways that could have significant impacts
14 on their missions, employees, and constituents. Given the significance of the impacts, the
15 uncertainty surrounding continued DOT funding is already causing the DOT Plaintiffs harm. To
16 give just a few examples:

- 17
- 18 a. Loss of FHWA funding would require Bremerton to immediately cease work
19 on projects to design improvements to a key corridor to address safety concerns
20 and provide critical infrastructure upgrades to the region.
- 21
- 22 b. Similarly, Rohnert Park would be forced to indefinitely delay an underway
23 Highway 101 bicycle and pedestrian overcrossing project if FHWA withholds
24 funds, leaving the City's residents, particularly those in vulnerable and
25 underserved communities, exposed to hazardous road conditions.
- 26
- 27

- 1 c. Withholding FAA funding from Milwaukee County would force it to cancel,
 2 delay, or modify—at significantly increased cost—projects to strengthen and
 3 rehabilitate major runways and other key airport infrastructure, impairing the
 4 County’s ability to fund capital projects over the long-term.
- 5 d. Even a delay in Pacifica’s receipt of DOT funding from grant awards passed
 6 through the State of California would cause disruptions in projects related to
 7 public safety and traffic control that rely on National Highway Traffic Safety
 8 Administration funds.
- 9 e. Loss of FTA funding would place Santa Rosa at risk of falling out of
 10 compliance with FTA regulations and California’s zero-emission requirements
 11 and would lead to staffing reductions, service curtailments, reduced
 12 maintenance capabilities in its transit system, and delayed or cancelled
 13 infrastructure improvements intended to serve the disabled and improve safety.
 14
 15

16 C. The HHS Grant Conditions

17 37. The “HHS Plaintiffs”⁷ have received, currently receive, or are otherwise eligible to
 18 receive federal grants administered by Defendant U.S. Department of Health and Human Services
 19 (HHS). Collectively, HHS Plaintiffs rely on over \$2 billion in appropriated federal funds from
 20 HHS grant programs, which fund essential health programs and services, such as child welfare
 21 assistance, adoption and foster care services, and healthcare for low income individuals and those
 22 living with HIV/AIDS. These programs are administered by HHS and its operating divisions and
 23
 24

25 ⁷ The “HHS Plaintiffs” are King County, Pierce County, Snohomish County, Boston, Columbus,
 26 NYC, San Francisco, Santa Clara, Cambridge, Chicago, Denver, Minneapolis, Wilsonville,
 27 Alameda County, Baltimore, Cambridge, Dane County, Eugene, Hennepin County, Milwaukee,
 Multnomah County, Oakland, Pacifica, Pima County, Ramsey County, Rochester, San Mateo
 County, and Wilsonville.

1 agencies, including but not limited to the Administration for Children and Families (ACF), the
 2 Health Resources and Services Administration (HRSA), the Substance Abuse and Mental Health
 3 Services Administration (SAMHSA), the National Institutes of Health (NIH), and the Centers for
 4 Disease Control and Prevention (CDC), among others.

5
 6 38. Like HUD and DOT, HHS has begun attaching new and similar conditions to grants
 7 administered by HHS and its operating divisions and agencies, as described below (collectively,
 8 the “HHS Grant Conditions”).

9 39. In April 2025, HHS updated its Grants Policy Statement (2025 HHS GPS), which
 10 applies to discretionary grants and is incorporated into awards and certain award modifications
 11 after April 16, 2025. The 2025 HHS GPS states:

12 [R]ecipients must comply with all applicable Federal anti-
 13 discrimination laws material to the government’s payment
 14 decisions for purposes of 31 U.S.C. § 372(b)(4).

15 (1) Definitions. As used in this clause –

16 (a) DEI means “diversity, equity, and inclusion.”

17 (b) DEIA means “diversity, equity, inclusion, and accessibility.”

18 (c) Discriminatory equity ideology has the meaning set forth in
 19 Section 2(b) of Executive Order 14190 of January 29, 2025.

20

21 By accepting the grant award, recipients are certifying that . . .
 22 [t]hey do not, and will not during the term of this financial
 23 assistance award, operate any programs that advance or promote
 24 DEI, DEIA, or discriminatory equity ideology in violation of
 25 Federal anti-discrimination laws

26 (together, the “HHS Discrimination Condition”).

27 40. In addition to these agency-wide conditions, several HHS operating divisions and
 agencies have issued their own general terms and conditions incorporating the 2025 HHS GPS.

41. ACF has updated its Standard Terms and Conditions, which apply to both
 discretionary and non-discretionary awards, to add a certification materially identical to the HHS

Discrimination Condition, which states:

For *new awards made on or after May 8, 2025*, the following is effective immediately:

Recipients must comply with all applicable Federal anti-discrimination laws material to the government’s payment decisions for purposes of [the FCA].

(1) Definitions. As used in this clause –

(a) DEI means “diversity, equity, and inclusion.”

(b) DEIA means “diversity, equity, inclusion, and accessibility.”

(c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.

(e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote the following in violation of Federal anti-discrimination laws: DEI, DEIA, or discriminatory equity ideology.

42. While HHS grants have long required compliance with nondiscrimination laws, President Trump, HHS, and other agencies have confirmed their agenda is to prohibit policies or programs promoting inclusion for people of all races, ethnicities, national origins, sexes, gender identities, or sexual orientations through the guise of enforcing federal nondiscrimination law.

43. SAMHSA has also updated its NOFO Application Guide to state that “[a]ll

activities proposed in your application and budget narrative must be in alignment with the current Executive Orders” (the “SAMHSA EO Condition”).

44. On May 14, 2025, HRSA issued updated general terms and conditions applicable to “all active awards.” The revised HRSA terms and conditions incorporate the 2025 HHS GPS and also contain the following new provision:

By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients, whose programs, are covered by Title IX certify as follows:

Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.

The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.

Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.

Recipient acknowledges that this certification reflects a change in the government’s position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.

Recipient acknowledges that a knowing false statement relating to Recipient’s compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

(the “HRSA Gender Ideology Condition”).

45. Finally, NIH has issued Notices of Award that contain a condition relating to Title

1 IX that is substantially identical to the HRSA Gender Ideology Condition (the “NIH Gender
2 Ideology Condition).

3 46. The HHS Grant Conditions contradict guidance contained in NOFOs issued by
4 HHS announcing competitions for HHS funds. For instance, in 2024, CDC issued a NOFO
5 announcing a competition for grants under the High-Impact HIV Prevention and Surveillance
6 Programs for Health Departments. The NOFO required applicants to include an element in their
7 applications “[a]ddressing [s]ocial and [s]tructural [f]actors.” The NOFO further stated that “[t]he
8 impact of racism, homophobia, transphobia, and stigma significantly exacerbates the health
9 disparities experienced among communities disproportionately affected by HIV.” Accordingly,
10 the NOFO explained, “[h]ealth equity is a desirable goal that entails special efforts to improve the
11 health of those who have experienced social or economic disadvantage.” With respect to
12 “[p]opulation(s) of [f]ocus,” the NOFO explained that “[a]pplicants must provide HIV services to
13 populations within the jurisdiction that are disproportionately impacted by HIV,” and provided
14 “[e]xamples to consider,” including “transgender women, cisgender Black or African American
15 women, gay and bisexual men, American Indian or Alaska Native gay and bisexual men, people
16 who inject drugs (PWID), youth, pregnant and postpartum persons and their infants, and other
17 populations with disproportionately higher rates of HIV diagnosis including individuals involved
18 in the justice system and people experiencing housing insecurity.”
19
20
21

22 47. HHS Plaintiffs face immediate and irreparable harms from imposition of the HHS
23 Grant Conditions during the pendency of this litigation absent a PI. Loss of HHS funding would
24 force jurisdictions to curtail or terminate essential services, leading many of their most vulnerable
25 residents to lose access to food, medical care, child care, and housing, among other critical
26 services. The curtailment of services would have wide-reaching public health consequences,
27

1 including but not limited to diminished pandemic preparedness and communicable disease control.

2 For example:

- 3 a. Loss of HRSA funding would cause at least 75 low income individuals living
4 in King County with HIV to immediately lose housing, up to 500 others to be
5 at high risk of losing housing, and approximately 3,300 such individuals to lose
6 access to critical medical and support services that help them navigate the
7 challenges of living with HIV.
- 8 b. A loss of Social Service Block Grants administered by ACF would lead to
9 thousands of Dane County's most vulnerable residents losing access to meals,
10 medical care, housing, and other essential social services.
- 11 c. San Francisco would be unable to replace tens of millions of dollars in Title IV-
12 E foster care and adoption assistance funds administered by ACF, forcing it to
13 end payments to foster families and agencies that provide housing, care, and
14 services to approximately 500 children who cannot remain safely in their
15 homes.
- 16 d. Losing CDC funding would force Minneapolis to curtail emergency
17 preparedness work, including losing three of five staff members who work on
18 the program and severely impacting the City's capacity to prepare and respond
19 to public health emergencies like the COVID-19 pandemic.
- 20 e. Similarly, reductions in CDC funding for HIV and sexually-transmitted
21 infection (STI) prevention and surveillance would lead to lay-offs and
22 elimination of programs, setting-back San Francisco's progress in addressing
23 those public health challenges. The resulting reduction in services would likely
24
25
26
27

1 lead to increases in HIV and syphilis infections as well as HIV and STI deaths.

2 f. Loss of TANF block grants would significantly impact services available to

3 vulnerable populations in NYC, including vocational training for the

4 unemployed and underemployed; counseling, legal assistance, case

5 management for survivors of domestic violence, and rental and legal assistance

6 for those facing eviction.

7

8 II. CONCLUSIONS OF LAW

9 1. The Court has jurisdiction over Defendants and the subject matter of this action.

10 Plaintiffs' claims are not subject to the Tucker Act because the sources of their asserted rights are

11 the U.S. Constitution and statutes, including the Separation of Powers doctrine, the Spending

12 Clause, the Fifth Amendment's vagueness doctrine, the Tenth Amendment, and the Administrative

13 Procedure Act (APA). Moreover, the type of relief Plaintiffs seek is declaratory and injunctive,

14 precisely the kind of relief that is generally not available in the Court of Federal Claims. *See Doe*

15 *v. Tenet*, 329 F.3d 1135, 1141 (9th Cir. 2003).

16

17 2. Plaintiffs have standing to bring this suit. "A loss of funds promised under federal

18 law satisfies Article III's standing requirement." *City & Cnty. of S.F. v. Trump* ("*San Francisco*"),

19 897 F.3d 1225, 1235 (9th Cir. 2018); *see also Dep't of Commerce v. New York*, 588 U.S. 752, 767

20 (2019). Here, Plaintiffs have been awarded, conditionally awarded, reasonably expect to be

21 awarded, or otherwise rely on federal grant funds that they could lose unless they accept unlawful

22 conditions that would dictate how they govern on matters of public concern. This imminent loss

23 of funds or infringement of rights is traceable to the conditions at issue and redressable by an order

24 barring their enforcement. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

25

26 3. To obtain a preliminary injunction, the Plaintiffs must establish (1) they are likely

27

1 to succeed on the merits; (2) irreparable harm is likely in the absence of preliminary relief; (3) the
 2 balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat.*
 3 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1).

4 4. There is a strong likelihood that the New CoC Plaintiffs will succeed on the merits
 5 of their claims that the CoC Grant Conditions violate (1) the Constitution's separation of powers
 6 doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *S. Dakota v. Dole*, 483 U.S.
 7 203, 207–08 (1987); (3) the Fifth Amendment's vagueness doctrine; and (4) the APA, 5 U.S.C. §
 8 706(2).
 9

10 5. There is a strong likelihood that the HUD Plaintiffs will succeed on the merits of
 11 their claims that the Non-CoC HUD Grant Conditions violate (1) the Constitution's separation of
 12 powers doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *Dole*, 483 U.S. at
 13 207–08 (1987); (3) the Fifth Amendment's vagueness doctrine; and (4) the APA, 5 U.S.C. §
 14 706(2).
 15

16 6. There is a strong likelihood that the DOT Plaintiffs will succeed on the merits of
 17 their claims that the DOT Grant Conditions violate (1) the Constitution's separation of powers
 18 doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *Dole*, 483 U.S. at 207–08; (3)
 19 the Fifth Amendment's vagueness doctrine; (4) the Tenth Amendment, *Nat'l Fed'n of Indep. Bus.*
 20 *v. Sebelius* ("NFIB"), 567 U.S. 519, 577–78 (2012); and (5) the APA, 5 U.S.C. § 706(2).
 21

22 7. There is a strong likelihood that the HHS Plaintiffs will succeed on the merits of
 23 their claims that the HHS Grant Conditions violate (1) the Constitution's separation of powers
 24 doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *Dole*, 483 U.S. at 207–08; (3)
 25 the Fifth Amendment's vagueness doctrine; and (4) the APA, 5 U.S.C. § 706(2).
 26

27 8. Plaintiffs have also shown that they are likely to suffer irreparable harm during the

pendency of litigation in the absence of a preliminary injunction.

9. The balance of equities tips toward Plaintiffs and the public interest strongly weighs in favor of entering a preliminary injunction. Defendants have not posited any non-monetary harm they will experience if an injunction were to issue, and they have no legitimate interest in ensuring that funds are spent pursuant to conditions that were likely imposed in violation of the APA and the Constitution. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (there is no legitimate government interest in violating federal law).

10. The Court deems no security bond is required under Rule 65(c).

III. ORDER

It is now, therefore, ORDERED as follows:

1. Plaintiffs' Third Motion for Preliminary Injunction is GRANTED;

2. HUD and its officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively "Enjoined HUD CoC Parties"), are enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in the Appendix to this Order, or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, with respect to any CoC funds awarded to the New CoC Plaintiffs or members of their Continuums; (2) as to the New CoC Plaintiffs or members of their Continuums, rescinding, withholding, cancelling, or otherwise not processing any CoC Agreements, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning CoC funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by this preliminary

1 injunction; (3) requiring the New CoC Plaintiffs or members of their Continuums to make any
2 “certification” or other representation related to compliance with such terms or conditions; or (4)
3 refusing to issue, process, or sign CoC Agreements based on New CoC Plaintiffs’ participation in
4 this lawsuit;

5
6 3. The Enjoined HUD CoC Parties shall immediately treat any actions taken to
7 implement or enforce the CoC Grant Conditions or any materially similar terms or conditions as
8 to the New-CoC Plaintiffs or their Continuums, including but not limited to any delays or
9 withholding of funds based on such conditions, as null, void, and rescinded; while this PI is in
10 effect, shall treat as null and void any such conditions included in any grant agreement executed
11 by any New CoC Plaintiff or member of a New CoC Plaintiff’s Continuum; and may not
12 retroactively apply such conditions to grant agreements during the effective period of this PI. The
13 Enjoined HUD CoC Parties shall immediately take every step necessary to effectuate this order,
14 including without limitation clearing any administrative, operational, or technical hurdles to
15 implementation;

16
17 4. HUD, all of the HUD program offices, and their officers, agents, servants,
18 employees, and attorneys, and any other persons who are in active concert or participation with
19 them (collectively “Enjoined HUD Parties”), are enjoined from (1) imposing or enforcing the Non-
20 CoC HUD Grant Conditions, as defined in the Appendix to this Order, or any materially similar
21 terms or conditions at any stage of the grant-making process, including but not limited to in new
22 grant applications, notices of funding availability or opportunity, certifications, grant agreements,
23 or post-award submissions, with respect to any non-CoC HUD funds awarded to the HUD
24 Plaintiffs or their subrecipients; (2) as to the HUD Plaintiffs or their subrecipients, rescinding,
25 withholding, cancelling, or otherwise not processing any non-CoC HUD awards, or pausing,
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1 freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning non-
2 CoC HUD funds, based on such terms or conditions, including without limitation failing or
3 refusing to process and otherwise implement grants signed with changes or other objections to
4 conditions enjoined by this preliminary injunction; (3) requiring the HUD Plaintiffs or their
5 subrecipients to make any “certification” or other representation related to compliance with such
6 terms or conditions; or (4) refusing to issue, process, or sign grant agreements based on HUD
7 Plaintiffs’ participation in this lawsuit;

9 5. The Enjoined HUD Parties shall immediately treat any actions taken to implement
10 or enforce the Non-CoC HUD Grant Conditions or any materially similar terms or conditions as
11 to the HUD Plaintiffs or their subrecipients, including but not limited to any delays or
12 withholding of funds based on such conditions, as null, void, and rescinded; while this PI is in
13 effect, shall treat as null and void any such conditions included in any grant agreement executed
14 by any HUD Plaintiff or its subrecipient; and may not retroactively apply such conditions to
15 grant agreements during the effective period of this PI. The Enjoined HUD Parties shall
16 immediately take every step necessary to effectuate this order, including without limitation
17 clearing any administrative, operational, or technical hurdles to implementation;

19 6. DOT, all of the DOT OAs, and their officers, agents, servants, employees, and
20 attorneys, and any other persons who are in active concert or participation with them (collectively
21 “Enjoined DOT Parties”), are enjoined from (1) imposing or enforcing the DOT Grant Conditions,
22 as defined in the Appendix to this Order, or any materially similar terms or conditions at any stage
23 of the grant-making process, including but not limited to in new grant applications, notices of
24 funding availability or opportunity, certifications, grant agreements, or post-award submissions,
25 as to any DOT funds awarded, directly or indirectly, to the New DOT Plaintiffs or their
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27

1 subrecipients; (2) as to the New DOT Plaintiffs or their subrecipients, rescinding, withholding,
2 cancelling, or otherwise not processing the DOT grant awards, or pausing, freezing, impeding,
3 blocking, canceling, terminating, delaying, withholding, or conditioning DOT funds, based on
4 such terms or conditions, including without limitation failing or refusing to process and otherwise
5 implement grants signed with changes or other objections to conditions enjoined by this
6 preliminary injunction; (3) requiring the New DOT Plaintiffs or their subrecipients to make any
7 “certification” or other representation related to compliance with such terms or conditions; or (4)
8 refusing to issue, process, or sign grant agreements based on New DOT Plaintiffs’ participation in
9 this lawsuit;
10

11 7. The Enjoined DOT Parties shall immediately treat any actions taken to implement
12 or enforce the DOT Grant Conditions or any materially similar terms or conditions as to DOT
13 funds awarded, directly or indirectly, to the New DOT Plaintiffs or their subrecipients, including
14 but not limited to any delays or withholding of funds based on such conditions, as null, void, and
15 rescinded; while this PI is in effect, shall treat as null and void any such conditions included in any
16 grant agreement executed by any New DOT Plaintiff or its subrecipient; and may not retroactively
17 apply such conditions to grant agreements during the effective period of this PI. The Enjoined
18 DOT Parties shall immediately take every step necessary to effectuate this order, including without
19 limitation clearing any administrative, operational, or technical hurdles to implementation;
20

21 8. HHS, all of the HHS operating divisions and agencies, and their officers, agents,
22 servants, employees, and attorneys, and any other persons who are in active concert or
23 participation with them (collectively “Enjoined HHS Parties”), are enjoined from (1) imposing or
24 enforcing the HHS Grant Conditions, as defined in the Appendix to this Order, or any materially
25 similar terms or conditions at any stage of the grant-making process, including but not limited to
26
27

1 in new grant applications, notices of funding availability or opportunity, certifications, grant
2 agreements, or post-award submissions, as to any HHS funds awarded, directly or indirectly, to
3 the HHS Plaintiffs or their subrecipients; (2) as to the HHS Plaintiffs or their subrecipients,
4 rescinding, withholding, cancelling, or otherwise not processing HHS grant awards, or pausing,
5 freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning
6 HHS funds, based on such terms or conditions, including without limitation failing or refusing to
7 process and otherwise implement grants signed with changes or other objections to conditions
8 enjoined by this preliminary injunction; (3) requiring the HHS Plaintiffs or their subrecipients to
9 make any “certification” or other representation related to compliance with such terms or
10 conditions; or (4) refusing to issue, process, or sign grant agreements based on HHS Plaintiffs’
11 participation in this lawsuit;
12

13
14 9. The Enjoined HHS Parties shall immediately treat any actions taken to implement
15 or enforce the HHS Grant Conditions or any materially similar terms or conditions as to HHS
16 funds awarded, directly or indirectly, to the HHS Plaintiffs or their subrecipients, including but
17 not limited to any delays or withholding of funds based on such conditions, as null, void, and
18 rescinded; while this PI is in effect, shall treat as null and void any such conditions included in
19 any grant agreement executed by any HHS Plaintiff or its subrecipient; and may not retroactively
20 apply such conditions to grant agreements during the effective period of this PI. The Enjoined
21 HHS Parties shall immediately take every step necessary to effectuate this order, including
22 without limitation clearing any administrative, operational, or technical hurdles to
23 implementation;
24

25 10. Defendants’ counsel shall provide written notice of this Order to all Defendants and
26 their employees by the end of the second day after issuance of this Order;
27

APPENDIX

The “CoC Grant Conditions” enjoined by this Order are the following terms and conditions:

- The recipient or applicant shall not use grant funds to promote “gender ideology,” as defined in E.O. 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any Grant Funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment;
- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services [sic] may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;
- No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;
- Subject to the exceptions provided by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States;

- The recipient or applicant agrees that use of Grant Funds and its operation of projects assisted with Grant Funds are governed by all Executive Orders.

The “**Non-CoC HUD Grant Conditions**” enjoined by this Order are the following terms and conditions:

- The recipient or applicant will not use Federal funding to promote diversity, equity, and inclusion (DEI) mandates, policies, programs, or activities that violate any applicable Federal antidiscrimination laws;
- The recipient or applicant shall not use grant funds to promote “gender ideology,” as defined in Executive Order (E.O.) 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal antidiscrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any grant funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment;
- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;
- If applicable, no state or unit of general local government that receives or applies for funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;

- Unless excepted by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.
- The recipient or applicant must comply with applicable existing and future Executive Orders, as advised by the Department, including but not limited to Executive Order 14182, Enforcing the Hyde Amendment; Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity; Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing.

The “**DOT Grant Conditions**” enjoined by this Order are the following terms and conditions:

- Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, the recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, by entering into this Agreement, the recipient or applicant certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws;
- The recipient or applicant agrees to comply with executive orders, including but not limited to Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, as they relate to the application, acceptance, and use of Federal funds for this project or grant;
- The recipient or applicant will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law;

- 1 – The recipient or applicant will follow applicable federal laws
2 pertaining to Subchapter 12, and be subject to the penalties set forth
3 in 8 U.S.C. § 1324, Bringing in and harboring certain aliens, and 8
4 U.S.C. § 1327, Aiding or assisting certain aliens to enter.
- 5 – The recipient or applicant must comply with other applicable federal
6 nondiscrimination laws, regulations, and requirements, and follow
7 federal guidance prohibiting discrimination;
- 8 – The recipient or applicant must comply with all applicable executive
9 orders as they relate to the application, acceptance, and use of
10 Federal funds for this Project;
- 11 – Performance under this agreement or application shall be governed
12 by and in compliance with the following requirements, as
13 applicable, to the type of organization of the recipient or applicant
14 and any applicable sub-recipients. The applicable provisions to this
15 agreement or application include, but are not limited to, the
16 following: Bringing in and harboring certain aliens – 8 U.S.C. 1324;
17 Aiding or assisting certain aliens to enter – 8 U.S.C. 1327; Executive
18 Order 14151, Ending Radical and Wasteful Government DEI
19 Programs and Preferencing; Executive Order 14168 Defending
20 Women from Gender Ideology Extremism and Restoring Biological
21 Truth to the Federal Government; and Executive Order 14173,
22 Ending Illegal Discrimination and Restoring Merit-Based
23 Opportunity.

24 The “**HHS Grant Conditions**” enjoined by this Order are the following terms and
25 conditions:

- 26 – The recipient or applicant must comply with all applicable Federal
27 anti-discrimination laws material to the government’s payment
28 decisions for purposes of 31 U.S.C. § 372(b)(4).

29 (1) Definitions. As used in this clause –

30 (a) DEI means “diversity, equity, and inclusion.”

31 (b) DEIA means “diversity, equity, inclusion, and accessibility.”

32 (c) Discriminatory equity ideology has the meaning set forth in
33 Section 2(b) of Executive Order 14190 of January 29, 2025.

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(e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws;

- All activities proposed in your application and budget narrative must be in alignment with the current Executive Orders;
- Funds cannot be used to support or provide services, either directly or indirectly, to removable or illegal aliens;
- By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients or applicants, whose programs, are covered by Title IX certify as follows:

The recipient or applicant is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.

The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.

Payments under the Agreement are predicated on compliance with the above requirements, and therefore the recipient or applicant is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.

The recipient or applicant acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.

1 The recipient or applicant acknowledges that a knowing false
2 statement relating to recipient's or applicant's compliance with
3 the above requirements and/or eligibility for the Agreement may
4 subject the recipient or applicant to liability under the False
5 Claims Act, 31 U.S.C. § 3729, and/or criminal liability,
6 including under 18 U.S.C. §§ 287 and 1001.
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3 *of Albuquerque, Mayor and City Council of*
4 *Baltimore, City of Bellevue, City of*
5 *Bellingham, City of Bremerton, County of*
6 *Dane, City of Eugene, City of Healdsburg,*
7 *County of Hennepin, Kitsap County, City of*
8 *Los Angeles, City of Milwaukee, Milwaukee*
9 *County, Multnomah County, City of Oakland,*
10 *City of Pacifica, City of Petaluma, Ramsey*
11 *County, City of Rochester, City of Rohnert*
12 *Park, San Mateo County, City of Santa Rosa,*
13 *City of Watsonville, Culver City Housing*
14 *Authority, Puget Sound Regional Council,*
15 *Sonoma County Transportation Authority,*
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33 ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
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ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR
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